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Spy Laws Debated in Trial of Naval Analyst

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BALTIMORE, Feb. 22 — A Justice Department lawyer argued in Federal Court here today that a Government employee who is accused of providing a classified document to a British military magazine had violated the espionage laws because "foreign agents read that magazine."

But a defense lawyer urged the judge to dismiss the case, saying Congress had not intended espionage laws to cover disclosures to the press, and because the defendant was accused of "nothing more than thousands and thousands of other Government officials have done."

The arguments before Federal District Judge Joseph H. Young came at a hearing on a defense motion to dismiss the case against Samuel Loring Morison, a naval intelligence analyst charged with providing a British military magazine, Jane's Defense Weekly, with three classified satellite photographs of a Soviet aircraft carrier under construction.

Mr. Morison is also charged with theft and illegal possession of classified naval intelligence reports about an explosion at a Soviet naval base.

Case Could Set Precedent

The case against Mr. Morison, if successful, would establish for the first time a precedent for using espionage

and theft laws to prosecute Government officials who make public without authorization classified documents relating to the military. The only similar prosecution, which involved the unauthorized disclosure of the Pentagon Papers, was dismissed on grounds of Government misconduct in 1973.

A Reagan Administration report in 1982 contended that the espionage laws "could also be used to prosecute a journalist who knowingly receives and publishes classified documents or information."

"The Government," Mr. Morison's attorney, Mark H. Lynch of the American Civil Liberties Union, said to Judge Young, "is asking you, by permitting this prosecution to go forward, to write a new law."

Mr. Lynch said that only Congress has the power to pass such an "official secrets act" making it a crime to disclose classified information to the news media, and that Congress had never done so. Mr. Lynch added that such a law might be unconstitutional and could stifle an informed public debate on military issues.

U.S. Interpretation Contested

Mr. Lynch also said that the law barring theft of Government property could not be interpreted in a way that would allow prosecution for unauthorized disclosure of classified information, as the Government is doing in the

Morison case.

Michael Schatzow, the Federal prosecutor, responded that publication of the satellite photographs in Jane's Defense Weekly caused "potential damage to the United States and potential advantage to various foreign nations" because of "information that foreign analysts could derive from these photographs concerning the capabilities of American intelligence-gathering methods, as well as American targeting priorities."

Mr. Schatzow, an Assistant United States Attorney, argued that the espionage laws applied when a Government secret is "published so everybody in the world can read it and not just the enemy" as well as when information is sold to a foreign agent.

Mr. Schatzow contended that Mr. Morison's motive was self-interest rather than to present information for political debate. "The defendant was trying to get a job" with the magazine, Mr. Schatzow said.

Motive Not Important, U.S. Says

In court papers, Mr. Schatzow also asserted that the Government considered Mr. Morison guilty regardless of whether he intended to harm the United States, or whether his motive had been to expose wrongdoing.

"If Morison had been inspired to violate his oath and disclose the photographs due to a desire to expose obvi-

ous wrongdoing in high official circles, he would be just as guilty," the prosecutor said in court papers filed earlier.

Judge Young said today that he would rule "promptly" on the motion to dismiss the charges against Mr. Morison. The judge denied several other preliminary motions by defense lawyers today.

Attorney General William French Smith personally authorized Mr. Morison's Oct. 1 arrest, and the case apparently represents an effort by the Reagan Administration to win a broad precedent for using the espionage and theft laws against officials who disclose classified information to the press.

The only previous effort to use such laws in this way was the indictment of Daniel Ellsberg and Anthony Russo for unauthorized disclosure of the Pentagon Papers, a Defense Department study of the Vietnam war.

Mr. Morison, who was a civilian employee of the Navy with a top-secret security clearance, worked with the Navy's consent as United States editor of Jane's Fighting Ships, a military publication affiliated with Jane's Defense Weekly.

Mr. Morison, the 40-year-old grandson of the late historian Samuel Eliot Morison, faces a maximum of 40 years in prison and a \$40,000 fine if convicted on all four counts.

The defendant sat with his attorneys at today's hearing, but said nothing. He has been free since a few days after his arrest on the condition that he would owe the Government \$100,000 if he fled to avoid prosecution.